IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:: J U D G M E N T ::

D.B. CRIMINAL APPEAL NO. 892/2002
(Ramakant Vs. The State of Rajasthan)

D.B.CRIMINAL APPEAL UNDER SECTION 374(2) Cr.P.C. AGAINST THE JUDGMENT DATED 27.09.2002 PASSED BY THE LEARNED SPECIAL ADDITIONAL DISTRICT AND SESSION JUDGE (WOMEN AROCITIES AND DOWRY CASES) SRI GANGANAGAR IN SESSIONS CASE NO. 43/98 – STATE VS RAMAKANT.

DATE OF JUDGMENT : 30th AUGUST, 2006

P R E S E N T

HON'BLE MR. JUSTICE N.N.MATHUR
HON'BLE MR. JUSTICE R.P.VYAS

Mr. R.S.Gill for the appellant.
Mr. JPS Choudhary, Public Prosecutor.

BY THE COURT : (PER HON'BLE MR. MATHUR,J.)

1. This appeal is directed against the judgment dated 27.09.2002 passed by the learned Special Judge (Women Atrocities & Dowry Cases) - Additional Sessions Judge, Sri Ganganagar, convicting the appellant of offence under Section 302 IPC and sentenced to imprisonment for life and to pay a fine of Rs.2,000/-, in default of payment of fine to further undergo

one years rigorous imprisonment.

2. The prosecution case as disclosed during the trial is that deceased Mamta Rani daughter of PW-1 Radhey Shyam, resident of Mandi Dabawali, District Sirsa, State of Haryana was married to Devendra son of Patiram, resident of Suratgarh, District Sri Ganganagar, State of Rajasthan. Patiram's daughter Vimla was married to PW-6 Ganga Singh @ Girijacharan. Appellant Ramakant is the brother of PW-6 Ganga Singh. PW-6 Ganga Singh lived in the house purchased by his father-in-law Patiram along with his wife Vimla and brother appellant Ramakant. Patiram was a railway employee. He lived in a railway quarter along with his son Devendra and deceased Mamta Rani. On 21.11.97, PW-1 Radhey Shyam submitted a written First Information Report at Police Station Suratgarh stating inter alia that about four years' back his daughter Mamta Rani was married to Devendra. After marriage, her in-laws used to ill treat her for not bringing sufficient dowry. Some time back, Pariram had turned out his son Devendra and deceased wife Mamta Rani from the house. Thus, his daughter Mamta Rani and son-in-law stayed with them for sometime at Mandi Dabawali. Some time back, Devendra returned to Suratgarh. The brother-in-law of deceased Mamta Rani also took her to Suratgarh. Patiram purchased a house in Suratgarh, in which, his daughter

Vimla and son-in-law Ganga Singh started living. His son-in-law's brother namely appellant Ramakant also used to reside with them. Partiram's daughter used to beat his daughter deceased Mamta Rani. He had no compliant against his son-in-law Devendra. It was further averred that a day before, Patiram and other family members had prepared non-vegetarian and consumed liquor. His daughter was being assaulted in absence of her husband. She was given threatening of divorce. In the morning, appellant Ramakant informed them about serious illness of his daughter namely Mamta Rani. He rushed to village Suratgarh. When he reached to the house, he found the dead-body of Mamta Rani. He suspected foul play on the part of in-laws of Mamta Rani. On this information, police registered a case for offence under Sections 302, 302/34 IPC and proceeded with the investigation. After usual investigation, police laid charge sheet against appellant Ramakant for offence under Section 302/34 IPC.

3. The appellant denied the charges levelled against him and claimed trial. The prosecution in support of its case adduced oral and documentary evidence. The appellant in his statement under Section 313 Cr.P.C. denied the correctness of the prosecution evidence appearing against him. The trial court in the absence of ocular evidence found the prosecution case proved relying on

the evidence of extra judicial confession before PW-3 Raghuveer Prasad and recovery of incriminating article i.e. bottle of pesticide (spray). The trial court having found the prosecution case proved, convicted and sentenced the appellant in the manner indicated above.

4. We have heard learned counsel for the appellant and perused the record. The entire case rests upon the evidence of PW-3 Raghuveer Prasad, before whom the appellant alleged to have made the extra judicial confession. Before we proceed to deal with the evidence of extra judicial confession, it would be convenient to deal with the other evidence particularly the statements of father and mother of the deceased, who have given the background of the incident.

5. PW-1 Radhey Shyam stated that his daughter deceased Mamta Rani was married with Devendra about six years' back at Suratgarh. She was being ill treated by her in-laws for not giving sufficient dowry. Particularly, her sister-in-law Vimla, her husband Girija Shanker and brother of Girija Shanker namely Ramakant. Appellant Ramakant used to beat his daughter. However, he had no complaint against Mamta's husband namely Devendra. Patiram had purchased a house for a sum of Rs.10,000/-. He had also contributed therein. In the said

house, Vimla, her husband and brother-in-law appellant Ramakant started living. A day after the incident, Ramakant visited Dabawali and informed that his daughter Mamta was seriously sick. He along with some 10 to 12 people reached Suratgarh. At the house of Patiram, they were preparing for the funeral of Mamta Rani. He did not allow her funeral and informed the police. Some liquid like vomit was found there. Police seized the same. Some other incriminating articles were also seized by the police. The autopsy of the dead-body was conducted on 22.11.97. He suspected that Mamta was being killed by poison. The statement of PW-2 Saroj Rani is almost in the same line. The autopsy of the dead-body was conduced by a medical board. The post-mortem Report Ex.P-14 has been proved by PW-5 Dr. Vijay Prakash Beniwal. He has given his opinion as follows:-

> In opinion of medical board deceased has died of cardio respiratory failure. No definite cause for it is ascertained on post mortem. However viscera articles preserved in hypertome saline & are sent to Chief Chemical Examiner to find out any possibility of poisoning.

6. Reverting to the evidence of extra judicial confession, PW-3 Raghuveer Prasad, a former member of the Municipal Board, Suratgarh deposed that after two or three days of the incident, the parents of deceased Mamta approached him and

sought help in the matter of murder of their daughter. They went to the house of Patiram. The house was locked. However, they could meet appellant Ramakant. He confessed his guilt stating that he committed wrong for which he should be excused. He also stated that when he tried to make unsuccessful attempt to molest deceased Mamta, she became annoyed. She gave threat of reporting the matter to her husband Devendra. Thus, he administered poison to her by pouring a liquid namely spray in her mouth. In the cross-examination, he admitted that he had not known appellant Ramakant. The evidence does not inspire confidence. It is significant to notice that even PW-1 Radhey Shyam and PW-2 Saroj Rani have not said a word, if they had ever approached to PW-3 Raghuveer Prasad. The another significant aspect is that this witness is a motbir of the arrest memo Ex.P-9 dated 3.12.97 of the appellant. However, police recorded his statement as late as on 23.02.98. As per his statement, after two or three days of the incident, when the parents of deceased Mamta approached him, the appellant made extra judicial confession before him. Thus, it must be 24th or 25th of November, 1997. If it is so, he could have disclosed this fact to the police when Ramakant was arrested on 3.12.97. More particularly, when he was a motbir of the arrest memo. This witness disclosed the fact of making extra judicial confession on 23.02.98 i.e. almost after three months. There is also no

ostensible reason of making confession by the appellant before PW-3 Raghuveer Prasad. Thus, the evidence of extra judicial confession does not inspire confidence. The trial court has committed error in relying on the evidence of extra judicial confession to convict the appellant.

7. The another incriminating piece of circumstance is the recovery of bottle of spray. It is stated that a bottle of spray was got recovered by the police vide Ex.P-10 in pursuance of the information given by appellant Ramakant vide Ex.P-17. As per the F.S.L. Report Ex.P-15, the liquid found in the bottle gave positive tests for presence of Organophosphorous Insecticide. It is submitted by the learned counsel that the bottle has been recovered from an abundant place. It is an open place. This piece of circumstance also does not inspire confidence. As per the extra judicial confession made by the appellant, when he had gone to the house of Patiram, he tried to molest deceased Mamta and when she objected and threatened to report the matter to her husband, he poured the liquid (spray) in her mouth. It is difficult to conceive that he would have gone to the house of Patiram with a bottle of spray. Be that as it may, taking into consideration all the facts and circumstance of the case, this piece of circumstance also does not inspire confidence. Even otherwise, this single piece of circumstance is not sufficient

to connect the appellant with the alleged crime. It is well settled that in the case of circumstantial evidence, all the circumstances should be established by independent evidence and they should form a complete chain to bring home the guilt of the accused without giving room to any other hypothesis. In this case, we have found many missing links.

8. In view of the aforesaid, the appeal is allowed. The conviction and sentence of appellant Ramakant S/o Prakash is set aside. He is in jail. He shall be released forthwith if not required in any other case.

(R.P.VYAS),J. **(N.N.MATHUR),J.**

ms rathore